

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEONTAI BERRY,

Defendant.

NO. CR19-230 JLR

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION FOR EARLY
TERMINATION OF PROBATION

Leontai Berry moves the Court for early termination of a five-year probationary sentence imposed on August 2, 2021, in lieu of a custodial sentence. The Probation Office does not support his request because Berry has only had sporadic employment over the past three years and has not firmly established a prosocial support network or engagement with prosocial activities. The United States agrees with Probation and likewise opposes early termination in this case. Berry's probationary sentence continues to serve a rehabilitative and public safety function if he has not yet demonstrated his ability to obtain and maintain steady, full-time employment.

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 In November 2019, the United States charged Berry and his mother, Shannon
3 McCall, with a conspiracy to straw purchase firearms. The investigation revealed that
4 McCall straw purchased at least five firearms for her son between August 2017 and
5 January 2019. PSR ¶ 9. One of those pistols was converted to a machinegun, used to
6 commit a drive-by shooting, and possessed by two convicted felons who were ineligible
7 to possess firearms. PSR ¶ 12. In social media conversations, Berry discussed selling
8 guns to other gang-involved people, knowing that those people would use those guns to
9 commit shootings. Gov’t Sentencing Mem., pp. 4-5 (Dkt. 97).

10 The Sentencing Guidelines range for Berry’s offenses is 24 months to 30 months
11 in custody. Despite the indisputable seriousness of these offenses and their widespread
12 community impacts, the government recognized numerous mitigating factors in Berry’s
13 history and characteristics, including his lack of criminal history, his young age (he was
14 only 18-19 years old when the majority of his criminal conduct occurred), his difficult
15 upbringing with a lack of positive role models, and his work on violence prevention and
16 intervention in our community. Therefore, the government joined the Probation Office in
17 recommending that Berry not be sentenced to prison but rather that he serve five years of
18 probation. Both the government and the defense characterized this recommendation as
19 “unusual” given the nature and circumstances of his offenses, but nevertheless explained
20 why a probationary sentence was appropriate in his case.¹ In particular, Probation
21 characterized five years of probation as a “meaningful amount of time” and noted that
22 Berry needed significant correctional treatment in the community to address numerous
23 adverse childhood experiences Probation Sentencing Recommendation, pp. 5-6. The
24 Court agreed with these recommendations and sentenced Berry to five years of probation.

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26 ¹ In contrast, the government viewed Berry’s mother (McCall) as more culpable than Berry and recommended a 24-
27 month prison sentence because her straw purchasing was more extensive. The Court sentenced her to 8 months in
custody, followed by two years of supervised release.

1 In three-and-a-half years of post-conviction supervision, the Probation Office has
2 not alleged any probation violations. Berry's approximately 20-month term of pretrial
3 supervision was similarly free of violations. Berry's probation requires him to "work full
4 time (at least 30 hours per week) at a lawful type of employment." Judgment, p. 3 (Dkt.
5 121). According to the Probation Office, Berry has not yet obtained his GED, has not
6 participated in vocational training or other education, and has maintained only sporadic,
7 and to some extent unverified, employment. The Probation Office has requested, but not
8 received, information substantiating Berry's self-employment and his ability to support
9 himself. In the absence of information confirming that Berry's self-employment is a
10 viable and stable means of employment, the Probation Office views Berry as
11 underemployed, or sporadically employed. Therefore, Probation Office objects to Berry's
12 motion for early termination of probation.

13 II. LEGAL AUTHORITY

14 A motion for early termination of probation is reviewed with reference to the
15 sentencing factors set forth in 18 U.S.C. § 3553(a)², "to the extent they are applicable."
16 18 U.S.C. § 3564(c). After considering these factors, the Court "may . . . terminate a term
17 of probation . . . if it is satisfied that such action is warranted by the conduct of the
18 defendant and the interest of justice."³ *Id.* The Court enjoys substantial discretion in
19 determining whether these factors are satisfied but must explain its decision with
20 reference to the aforementioned statutory factors and legal standard. *Cf. United States v.*
21 *Emmett*, 749 F.3d 817, 820 (9th Cir. 2014) (observing that "[a] district court's duty to
22
23

24 ² These factors include the nature and circumstances of the offense, the history and characteristics of the defendant,
25 the need to afford adequate deterrence, protection of the public, and providing the defendant with needed
26 educational or vocational training or other correctional treatment. *See* 18 U.S.C. § 3553(a)(1), (a)(2)(B), (a)(2)(C),
27 (a)(2)(D).

³ 18 U.S.C. § 3564(c) also requires a defendant serve at least one year of probation before early termination. That condition is satisfied here.

1 explain its sentencing decisions extends to requests for early termination of supervised
2 release”).

3 III. ARGUMENT

4 In the government’s view, probation requires not only the absence of violations
5 but also the presence of sustained, stable, productive activity. The entire goal of probation
6 is for a person to build a prosocial foundation that can be sustained. *See United States v.*
7 *Murray*, 275 U.S. 347 (1928) (describing the reformatory purpose of Federal Probation
8 Act); *see also United States v. Consuelo-Gonzalez*, 521 F.2d 259, 263 (9th Cir. 1975)
9 (“The theme that rehabilitation underlies probation is mirrored not only in the probation
10 systems established under state law, but also in the Model Penal Code, which expressly
11 recognizes rehabilitative by authorizing the imposition of any conditions of probation
12 ‘reasonably related to the rehabilitation of the defendant and not unduly restrictive of his
13 liberty or incompatible with his freedom of conscience.’”).

14 Employment and vocational education are essential to the rehabilitative function
15 of probation. *See* 18 U.S.C. § 3563(b)(4) (indicating that the court may, in its discretion,
16 impose a condition of probation that requires a defendant to “work conscientiously at
17 suitable employment or pursue conscientiously a course of study or vocational training
18 that will equip him for suitable employment”). Although the Probation Office assesses
19 Berry as a low risk to reoffend, they have identified his primary risk factors as Social
20 Networks and Education/Employment. Further, in undersigned counsel’s experience, it is
21 highly unusual, and perhaps even unprecedented, for the Court to grant early termination
22 of probation or supervised release when a person has not established a pattern of stable,
23 full-time employment.

24 Berry’s motion contains few details about his present employment status and his
25 plans for the future. He has not presented, nor has the Probation Office received,
26 documentation showing that his cleaning business produces a steady, livable income. His
27 contract work is sporadic, and his plans for a transportation business are admirable but

1 currently theoretical. In his letter to the Court, Berry says that he has had difficulty
2 getting hired at a “normal 9-5” job, but it is not clear what that that difficulty is. His
3 felony conviction is undoubtedly a barrier, but many other individuals with felony
4 convictions have obtained steady employment while on federal supervised release.
5 Additionally, the Probation Office’s 2021 Sentencing Recommendation noted that one of
6 Berry’s goals was to obtain his GED. To the best of the government’s knowledge, he has
7 not done so. The absence of a high school diploma and other vocational training may
8 continue to be a barrier for him. Probation could still assist him in achieving his goal of
9 obtaining a GED, as well as in obtaining and maintaining steady employment.

10 IV. CONCLUSION

11 The nature and circumstances of the offense, the history and characteristics of the
12 defendant, the need to afford adequate deterrence, the need for protection of the public,
13 and the need for providing the defendant with needed educational vocational and other
14 correctional treatment all weigh in favor of Berry continuing on probation, at least until
15 he can provide the Court and the Probation Office with a steady track record of stable and

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1 sustainable employment. For the foregoing reasons, early termination of probation at the
2 present time is not warranted by the conduct of the defendant, nor is it in the interest of
3 justice. Therefore, the government asks the Court to deny Berry's motion.

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5 DATED this 22nd day of February, 2025.

6 Respectfully submitted,

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16 *I certify that this memorandum contains*
17 *1,213 words, in compliance with the*
18 *Local Criminal Rules.*